

AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF INDIA
AND
THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY
ON
AUDIO VISUAL CO - PRODUCTIONS

The Government of the Republic of India

And

the Federal Republic of Germany

(hereinafter jointly referred to as the “Contracting Parties”);

Considering that audio-visual co-productions can significantly contribute to the development of the film industry and to an intensification of the cultural and economic exchange between the two countries;

Resolved to stimulate cultural and economic co-operation between the Republic of India and the Federal Republic of Germany;

Desiring to create conditions for good relations in the audio-visual area, particularly for the co-production of films and TV and video productions;

Mindful of the fact that the quality of co-productions can help to expand the production of TV and video productions of both countries;

Have agreed as follows:

Article 1

Definition of “audio-visual co-production”

For the purpose of this Agreement, an “audiovisual co-production” is a project irrespective of length, including animation and documentary productions, produced in any format, for exploitation in theatres, on television, videocassette, videodisc, CD-ROM, DVD or by any other form of distribution. New forms of audiovisual production will be included in

this Agreement, through the exchange of notes between the Contracting Parties.

Article 2

Competent authorities

- (1) The competent authorities responsible for the implementation of this Agreement shall be:
 - (a) on behalf of the Republic of India, the Ministry of Information and; and
 - (b) on behalf of the Federal Republic of Germany, the Federal Office of Economics and Export Control (BAFA).
- (2) Co-productions falling within the scope of this Agreement shall be subject to the approval of the competent authorities.
- (3) The Contracting Parties shall inform each other if the competent authorities are replaced by others.

Article 3

Approval as national films

- (1) Films which are produced within the framework of this Agreement shall be deemed national films.
- (2) These films shall be entitled to claim all state support benefits available to the film and video industries and the privileges granted by the provisions in force in the respective countries.

Article 4

Conditions for obtaining approval of co-production status

(1) Any benefits under this Agreement shall be available for the co-production only when investment of finance, material and management including creative and other inputs is not below 20 % (twenty percent) of the total cost coming from the co-producer of one country.

(2) The co-producers of a film shall have their principal office or a branch office in the territory of one of the Contracting Parties. None of the co-producers shall be linked by common management, ownership or control.

(3) Technical and artistic personnel are those persons who, in accordance with the domestic law in force in their own country, are recognized as makers of audio-visual productions, in particular screenwriters, directors, composers, editors, directors of photography, art directors, actors and sound technicians. The contribution of each of these persons shall be evaluated individually.

(4) As a rule, the contribution includes at least one leading actor, one supporting actor and/or one qualified technical staff person, in addition to the one person as referred to in paragraph (3) provided that two qualified technical staff persons may substitute for one leading actor.

(5) The co-producers in either of the two countries shall satisfy themselves about each other's capability, including their professional knowledge, organizational capability, financial backing and professional reputation. The Contracting Parties are not responsible or liable for the credentials of either of the co-producers.

(6) The company carrying out the co-production shall provide evidence that the primary business of that company is audiovisual (film, television and video) production.

Article 5 Participants

1. The persons participating in the production of a film shall fulfill the following requirements:

(a) As regards the Republic of India, they shall be -

- (i) Nationals/Citizens of the Republic of India or
- (ii) Permanent residents of India;

(b) As regards the Federal Republic of Germany, they shall be

- (i) Germans within the meaning of the Basic Law;
- (ii) persons who are rooted in the German culture and have their legal residence in the territory of the Federal Republic of Germany;
- (iii) nationals of a member state of the European Union; or
- (ii) nationals of another party to the Agreement on the European Economic Area (EEA) of 2 May 1992.

2. Participants in the co-production as defined in sub paragraphs (a) and (b) must at all times throughout the production retain their national status, and may not acquire or lose such status at any point during the course of production activity.

3. Should the film so require, the participation of professionals who are not citizens of one of the co-producing countries may be permitted, but only in exceptional circumstances, and subject to agreement between the competent authorities of b

Article 6

Film Negatives and Languages

(1) Two negatives, or at least one negative and one duplicate negative, shall be made of all co-produced films. Each co-producer shall be entitled to make a further duplicate or prints there from. Each co-producer shall also be entitled to use the original negative in accordance with the conditions agreed upon between the co-producers themselves.

(2) The original soundtrack of each co-production film shall be made in Hindi or any other Indian language or dialect or, in English or German or in any combination of those permitted languages. Dialogue in other languages may be included in the co-production, as the script requires.

(3) The dubbing or subtitling into one of the permitted languages of the Republic of India or into German shall be carried out in the Republic of India, or in the Federal Republic of Germany or in another Member State of the European Union or in another Contracting State of the Agreement on the European Economic Area respectively. Any departure from this principle must be approved by the competent authorities.

Article 7

Entry in International Festivals

(1) The majority co-producer shall normally enter co-produced films in international festivals.

(2) Films produced on the basis of equal contributions shall be entered as a film of the country of which the director is a national, provided that the director is not from a country contemplated in Article 5(1) (a) (iv), in which case the film shall be submitted as a film of the country of which the lead actor is a national, subject to the agreement of the competent authorities of both Contracting Parties.

Article 8

Minority and majority contribution in the case of multilateral co-productions

Subject to the specific conditions and limits laid down in laws and regulations in force in the Contracting Parties, in the case of multilateral co-productions, the minority contribution may not be less than 10% (ten per cent) and the majority contribution may not exceed 70% (seventy per cent) of the total cost of the film.

Article 9

Contributions of the producers

(1) Notwithstanding the provisions of this Agreement and in the interest of bilateral co-productions, even those films, which are produced in one of the two countries and where the minority contribution is limited to financial investment, may be granted co-production status according to the co-production agreement. In such a case, the minority contribution may not be less than 20% (twenty per cent) of the final total cost of the film.

(2) The granting of co-production status to each individual production of this kind shall be subject to the prior approval by the competent authorities.

(3) The expenses incurred in the territories of the Contracting Parties for the promotion of such co-productions shall be compensated within two years of the completion of the project.

Article 10

Balanced contribution

(1) A general balance should be maintained with regard to both the artistic and technical personnel, including the cast, and with regard to the financial investment and facilities (studios, laboratories, and postproduction).

(2) The Joint Commission, established in terms of article 12, shall carry out a review to see whether this balance has been maintained and, if this is not the case, shall take measures, which it considers necessary in order to re-establish such a balance.

Article 11

Credits

A co-production film and the promotional materials associated with it shall include either a credit title indicating that the film is “an official German-Indian co-production” or “an official Indian German co-production” or where relevant a credit which reflects the participation of the Federal Republic of Germany, Republic of India and the country of the third co producer.

Article 12
Joint Commission

- (1) The Joint Commission shall be composed of representatives from Government and from the film, television and video industries of both Contracting Parties.
- (2) The role of the Joint Commission shall be to supervise and review the implementation and operation of this Agreement and to make any proposals considered necessary to improve the implementation of the Agreement.
- (3) The Joint Commission shall be convened, whether by meeting or otherwise, at the request of either of the Contracting Parties within six months of such a request.

Article 13
Temporary Entry into the country

For approved co-productions, each Contracting Party shall facilitate, in accordance with the domestic law in force in its country:

- (a) Entry into and temporary residence in its territory for technical and artistic personnel of the other Contracting Party;
- (b) the import into and export from its territory of technical and other film making equipment and materials by producers of the other Contracting Party.

Article 14
Amendment

This Agreement may be amended by the mutual consent of the Contracting Parties through the exchange of notes between the Contracting Parties through the diplomatic channel.

Article 15
Settlement of Disputes

Any dispute between the Contracting Parties arising out of the interpretation or implementation of this Agreement shall be settled consensually through consultation and negotiation.

Article 16
Entry into Force, Duration and Termination

- (1) This Agreement shall enter into force on the date of signature.
- (2) This Agreement including the annex, which forms an integral part of this agreement, shall remain in force for an unlimited period of time, unless terminated in terms of paragraph (3).
- (3) Either Contracting Party may terminate this Agreement by giving six months' written notice in advance of such intention to the other Contracting Party through the diplomatic channel.
- (4) Termination of this Agreement shall have no effect on the completion of co-productions approved prior to its termination.

Done at Berlin on this day of 16th of February 2007 in two originals each in Hindi, English and German, all three versions being authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the
Republic of India

For the Government of the
Federal Republic of Germany

Annexure
to
Agreement
between
the Government of the Republic of India
and
the Government of the Federal Republic of Germany
on
Audio Visual Co-Productions

(Rules of procedure
for applications for approval of co-production status under this
agreement)

1. Applications for qualification of a film for co-production benefits under this Agreement for any co-production must be made simultaneously to both competent authorities at least thirty (30) days before shooting begins.

2. The competent authority of both Parties shall communicate their proposal to the other competent authority within twenty (20) days of the submission of the complete documentation as described in paragraph 3 below.

3. Documentation submitted in support of an application shall consist of the following items, drafted in English in the case of India and in German in case of Germany:
 - 3.1 The final script and synopsis; Co-productions under this Agreement shall be shot in India or Germany, as the case may be, in accordance with the guidelines of the respective country; The Contracting Parties shall inform each other from time to time of relevant guidelines and any changes thereto.

 - 3.2 documentary proof of having legally acquired the rights to produce and exploit the co-production and that the copyright for the co-production has been legally acquired;

 - 3.3 a copy of the co-production contract signed by the two co-producers.

The contract shall include -

- a) the title of the co-production;
- b) the name of the author of the script, or that of the adaptor if it is drawn from a literary source; necessary permission for adapting the literary work into a film from the author/legal heirs may be attached;
- c) the name of the director (a substitution clause is permitted to provide for his/her replacement if necessary);
- d) the budget;
- e) the financing plan;
- f) a clause establishing the sharing of revenues, markets, media or a combination of these;
- g) a clause detailing the respective shares of the co-producers in any over or under expenditure, which shares shall in principle be proportional to their respective contributions, although the minority co-producer's share in any over expenditure may be limited to a lower percentage or to a fixed amount providing that the minimum proportion permitted under Article 9 of the Agreement is respected;

- h) a clause stating that the competent authorities have to be informed if the percentage of the contribution of a co-producer changes subsequent to the approval of the competent authorities; in any case, the contribution may not be less than the minimum contribution agreed in Article 9;
- i) a clause stating that films co-produced under this Agreement may be publicly exhibited in either country in accordance with prescribed rules/procedures;
- j) a clause recognizing that admission to benefits under this Agreement does not constitute a commitment that governmental authorities in either country will grant a license to permit public exhibition of the co-production;
- k) a clause prescribing the measures to be taken where:
 - (i) after full consideration of the case, the competent authorities in either country refuse to grant the benefits applied for;
 - (ii) the competent authorities prohibit the exhibition of the co-production in either country or its export to a third country;
 - (iii) either one or the other Contracting Party fails to fulfill its commitments;
- l) the period when shooting is to begin;

- m) a clause stipulating that the majority co-producer shall take out an insurance policy covering at least "all production risks" and "all original material production risks"; and
- n) a clause providing for the sharing of the ownership of copyright on a basis that it is proportionate to the respective contributions of the co-producers.

3.4 the distribution contract, where it has already been signed, or a draft if it has yet to be concluded;

3.5 a list of the creative and technical personnel indicating their nationalities and, in the case of performers, the roles they are to play;

3.6 the production schedule;

3.7 the detailed budget identifying the expenses to be incurred by each country; and

3.8 all contracts and other relevant financial documentation for all participants in the financial structure.

4. The competent authorities can demand any further documents and all other additional information deemed necessary.

5. In principle, the final shooting script (including the dialogue) should be submitted to the competent authorities prior to the commencement of shooting.

6. Amendments, including the replacement of a co-producer, may be made in the original contract, but they must be submitted for approval by the competent authorities before the co-production is finished. The replacement of a co-producer may be allowed only in exceptional cases and for reasons satisfactory to both the competent authorities.

7. The competent authorities will keep each other informed of their respective decisions.

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